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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,033	08/21/2001	Alexander Rothacker	28655/37222	7797

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/934,033	ROTHACKER, ALEXANDER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-7 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speyer (3,825,253) in view of Webber et al. (6,193,635), and in further view of Rennex (4,971,305), Wednt (4,444,396), Rankin (5,011,138) and Choice 1 Medical Distributors website ("Choice1").

As to claims 1 and 12-14, Speyer discloses an incremental weight system comprising a plurality of disk shaped weights ranging in various weights having a center opening and slot adapted to receive a standard barbell and a weight bearing cable (see Figs. 2 & 3). Speyer does not disclose that the weights range in weight from one quarter-ounce weight to two-ounce weights including increments there between such as one-half ounce and one ounce weights. Webber et al. disclose a weight stack apparatus that includes incremental weights of 5 pounds or less (see col. 6, lines 30-34). Rennex discloses an exercise device that utilizes finely incremental add-on weights that may include increments of 4 ounces (see Col. 3, lines 9-12 & Col. 4, lines 30-34), Wendt discloses an exercise device that utilizes weight plates of various sizes weighing 1,2,4,8 and 16 ounces (see SBSTRACT), Rankin discloses a sports device that utilizes on-eighth ounce weights (see Col. 7, lines 30-33) and Choice 1 discloses a

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32 ounce weight for exercise (see website c1md.com). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Speyer's weight plates into any of an array of sizes from 1/4 ounce to 45 pounds since the use of such a range of sizes is well known in the exercise art as shown by the representative references cited above and the practice of incrementally adding weight plates of various sizes during exercise is well known in the art.

As to claims 2-7, Speyer, Webber et al., Rennex, Wednt, Rankin and Choice<sup>1</sup> disclose a modified weight system as described above. They do not disclose explicitly disclose that the weights range in size from one-quarter ounce to 32 ounces. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the weight plates into any of an array of sizes from less than 80 ounces including one-eighth ounce up to 32 ounces since the use of such sizes is well known in the exercise art.

As to claims 15-20, Speyer discloses an incremental weight system and inherently a method for exercising as substantially claimed wherein the system comprises a plurality of weights having a slot adapted to receive a weight bearing cable and a center opening adapted to receive a standard barbell (see Fig.3). Speyer does not disclose the specific sized weight plates as claimed. Rennex, Wednt, Rankin and Choice 1 disclose weight plates having various sizes between one-eighth ounce and 32 ounces. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the weight plates into any of an array of sizes within that range since the use of such a range of weights is well known in the exercise art.

2. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber et al (6,193,635) in view of Rennex (4,971,305) and in further view of Wednt (4,444,396), Rankin (5,011,138) and Choice1.

As to claims 8-11, Webber discloses an incremental weight system comprising a cable type weight training apparatus and a plurality of weights having a center opening and slot as substantially claimed (see Col. 6, lines 34-44, col. 7, lines 24-26 & Fig. 11). Webber does not disclose that the weights range in weight from one quarter ounce to 32 ounces including at least a half ounce, one ounce, two ounce, 4 ounce, 8 ounce, 16 ounce and 32 ounce weights. Rennex, Wednt, Rankin and Choice1 disclose weight plates as small as one-eighth ounce up to 80 ounces. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Webber's add-on plates into any of an array of sizes as substantially claimed since the use of such a range of weights plates and the practice of incrementally adding weight plates for exercise is well known in the art.

### ***Response to Arguments***

3. Applicant's arguments filed July 1, 2004 have been fully considered but they are not persuasive.

Regarding claims 1-20, Speyer clearly discloses incremental weights adapted for use with conventional weight training apparatus. Webber, Rennex, Wednt, Rankin and Choice 1 disclose the use of incremental weights having a range of weights that would encompass the specifically claimed weights of one-quarter ounce, one half-ounce, one ounce and two ounces. In particular, Webber discloses the range of weights as being

"5 pounds or less" while Rankin discloses weights as small as one-eighth of an ounce. This range and the increments therein would clearly include the specifically claimed weights. The Applicant argues that Webber does not suggest an incremental weight, but Webber clearly discloses that the weights of various sizes can be used to incrementally reach a desired weight (see Col. 7, lines 24-26). The Applicant also argues that Wendt is nonanalogous art, but the Examiner respectfully disagrees. Although the device is directed to golf-related activities, it uses incremental weights to increase a user's strength (see ABSTRACT). Similarly, Rankin discloses a sports device that uses incremental weights wherein the user is provided exercise and amusement during use of the device (see Col. 1, lines 5-16). Finally, the Choice1 reference was included to show that there are weights (2 pounds) of the size (32 ounces) as claimed by the applicant for use in incremental weight training.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 15, 2004

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**JUSTINE R. YU**  
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10/18/04